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SUPREME COURT OF THE UNITED STATES.

No. 141.

NATHAN E. HOOPER, LOUISA J. HOOPER AND AMANDA E. HOOPER, MINORS, BY ABSALOM FOWLER, THEIR NEXT FRIEND, PLAINTIFFS IN ERROR,

vs.

ELIAS N. CONWAY.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF ARKANSAS.

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Gideon, Print.

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the Honorable the Judges of the Circuit Court of the United States for the eastern district of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, in a certain action of ejectment which is in the said circuit court before you, between Nathan E. Hooper, Louisa J. Hooper, and Amanda E. Hooper, minors, under twenty-one years of age, who sue by Absalom Fowler, their next friend, plaintiffs, and Elias N. Conway, defendant, manifest error has intervened, as is alleged, to the great damage of the said plaintiffs, as by their complaint appears, and we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington City, on the first Monday of December next, A. D. 1857, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause to be done therein to correct that error, what of right and according to the laws of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this 29th day of April, in the year of our Lord one thousand eight hundred and fifty-seven. and the seal of the said circuit court.

[SEAL.]

WM. FIELD, *Clerk.*

Allowed by—

DANIEL RINGO,
U. S. Judge for the Eastern district of Arkansas.

THE UNITED STATES OF AMERICA,
Eastern District of Arkansas.

The execution of this writ of error appears by the transcript of the record and proceedings hereto attached.

Witness my hand, as clerk of the circuit court of the United States for the eastern district of Arkansas, and the seal of said court, this 19th day of October, A. D. 1857.

[SEAL.]

Attest: WM. FIELD, *Clerk.*

Filed 29th April, 1857.

WM. FIELD, *Clerk.*
By R. SEARCY, *D. C.*

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States, to Elias N. Conway, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden in Washington City on the first Monday of December next, A. D. 1857, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the eastern district of Arkansas, wherein Nathan E. Hooper, Louisa J. Hooper, and Amanda E. Hooper, minors, under twenty-one years of age, who sue by Absalom Fowler, their next friend, are the plaintiffs in error, and you are the defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 29th day of April, in the year of our Lord one thousand eight hundred and fifty-seven.

DANIEL RINGO,
U. S. Judge for the Eastern district of Arkansas.

Came to hand Oct. 6th, 1857.

The within citation was executed on the within named Elias N. Conway by leaving with him a true copy of the within citation this 6th October, 1857.

JOHN QUINDLEY,
U. S. Marshal for Eastern district of Arkansas.
By JAS. A. MARTIN, *D. M.*

Fees:	Service, - - -	50
	Mileage, - - -	06
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THE UNITED STATES OF AMERICA,
Eastern District of Arkansas.

Be it remembered, that at a circuit court of the United States, in and for the eastern district of Arkansas, began and holden at the court-house in the city of Little Rock, on the second Monday of April, A. D. 1857, being the 13th day of April, A. D. 1857, the following proceedings were had—the Honorable Daniel Ringo, judge of the United States court for said district, presiding, and holding the term of said circuit court:

In the Circuit Court for said district.

THE UNITED STATES OF AMERICA,
Eastern District of Arkansas, sct.

Nathan E. Hooper, Louisa J. Hooper, and Amanda E. Hooper, minors, under twenty-one years of age, who are citizens of the State

of Louisiana, and who sue by Absalom Fowler, their next friend, complain of Elias N. Conway, who is a citizen of the State of Arkansas, and defendant herein, of a plea, wherefore he, with force and arms, entered into and upon the undivided one-fourth part of the following described lots or parcels of land, to wit: lots numbered one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve, in block numbered seven, parcels of land in what is called Governor Pope's addition to Little Rock, as designated on the plat thereof, east of the Quapaw line, and ejected the said plaintiffs therefrom.

For that the said plaintiffs heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and fifty-three, in the said district, were entitled to the possession of one undivided fourth part of said lots, numbered one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve, in said block numbered seven, in what is called Governor Pope's addition to Little Rock, as designated on the plat thereof, which is of record in the recorder's office of the county of Pulaski, and situate within the city of Little Rock, in the said county and district, and east of the Quapaw line—lands of great value, to wit, of the value of ten thousand dollars; and they, the said minors, then and there being so entitled to the possession of the said one undivided fourth part of the said lots of land, of the value aforesaid, the said defendant afterwards, to wit, on the day and year last aforesaid, in the county and district aforesaid, with force and arms entered into and upon the said undivided fourth part of the said lots of land, and ejected the said minors therefrom, and has held unlawfully, and still unlawfully withholds, the possession thereof from the said minors; and other wrongs to the said minors then and there did, contrary to the peace of the United States, and to the great damage of the said minors, to wit, of the sum of ten thousand dollars; and therefore they sue by their next friend, &c.

A. FOWLER,
Next friend, &c.

To the clerk of the Circuit Court of the United States, for the eastern district of Arkansas:

On the application of the minors and plaintiffs in the annexed and foregoing declaration, to wit, Nathan E. Hooper, Louisa J. Hooper, and Amanda E. Hooper, I hereby consent to act as their next friend in the suit contemplated by said declaration to be instituted and prosecuted in said court.

Given under my hand, this 14th day of March, A. D. 1857.

ABSALOM FOWLER.

On the foregoing application and declaration, I hereby appoint Absalom Fowler, next friend for Nathan E. Hooper, Louisa J.

Hooper and Amanda E. Hooper, minors and plaintiffs therein, to prosecute said suit in their names as such.

Witness my hand, this 14th day March, A. D. 1857.

WM. FIELD, *Clerk.*

I, Absalom Fowler, acknowledge myself security for all costs for which the plaintiffs may be liable in this suit.

March 14, 1857.

A. FOWLER.

Filed 14th March, 1857, and writ of summons issued same day.

Attest: WM. FIELD, *Cl'k.*

The United States of America to the Marshal of the eastern district of Arkansas, greeting:

You are hereby commanded to summon Elias N. Conway, if he be found within your bailiwick, to appear before the judge of our circuit court of the United States in and for the district of Arkansas, at the court-house, in the city of Little Rock, on the first day of our next April term, to answer Nathan E. Hooper, Louisa J. Hooper and Amanda E. Hooper, minors, who sue by Absalom Fowler, their next friend, of a plea, wherefore he, with force and arms, entered upon the undivided fourth part of lots numbered one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve, in block numbered seven, in Governor Pope's addition to Little Rock, and ejected them therefrom, and to their damage of ten thousand dollars, and have you then there this writ.

In testimony whereof, Roger B. Taney, esq., Chief Justice of the Supreme Court, hath caused the seal of said circuit [L. S.] court to be hereunto affixed, this 14th day of March, A. D. 1857, and in the year of our independence.

Attest: WM. FIELD, *Clerk.*

By virtue of this writ, to me directed, I executed the same on the within named Elias N. Conway, in Pulaski county, at and within the eastern district of Arkansas, on the 14th of March, A. D. 1857, by then and there reading the same to him in his presence and within his hearing.

Given under my hand, this 13th day of April, A. D. 1857.

JOHN QUINDLEY,
U. S. Marshal.

Marshal's fees: Service $3 00.

Returned and filed 13th Ap'l, 1857.

WM. FIELD, *Cl'k.*
By R. SEARCY, *D. C.*

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On the 14th April, 1857, the following proceedings were had:

NATHAN E. HOOPER et al., Plaintiffs,
vs.
ELIAS N. CONWAY. } In Ejectment.

This day comes the said defendant by attorney and files his plea of "not guilty" in this case, and the said plaintiffs by attorney join issue to said plea.

United States Circuit Court, eastern district of Arkansas—April Term, 1857.

NATHAN E. HOOPER et al.
vs.
ELIAS N. CONWAY.

The defendant by attorney comes and says, that he is not guilty of unlawfully withholding the premises described in the declaration from the plaintiffs, in manner and form as therein alleged against him. And of this he puts himself on the country.

S. H. HEMPSTEAD,
Attorney for Defendant.

Filed 14th Ap'l, 1857.

WM. FIELD, *Cl'k.*
By R. SEARCY, *D. C.*

Proceedings had on 20th April, 1857:

NATHAN E. HOOPER, LOUISA J. HOOPER and Amanda E. Hooper, minors under the age of twenty-one years, who sue by Absalom Fowler, esq., their next friend, Plaintiffs,
vs.
ELIAS N. CONWAY, Defendant. } In Ejectment.

This day came the parties aforesaid by their respective attorneys; and also a jury came, to wit: Marmaduke Osborne, and eleven other good and lawful men of this district, who were duly empanelled and sworn, well and truly to try the issue joined in this case, and a true verdict render according to the evidence; and during the progress of the trial, various exceptions were taken to the ruling and opinion and instructions of the court as to the admissibility of evidence adduced by the defendant, and leave was granted to said plaintiffs to a future day of the present term of this court, to prepare and file a formal bill of exceptions herein. And the jury, after having heard the evidence adduced by both parties, and the arguments of counsel, returned into court the following verdict, to wit: "We, the jury, find for the defendant. Marmaduke Osborne, foreman."

It is therefore ordered, adjudged and considered, that the said plaintiffs, Nathan E. Hooper, Louisa J. Hooper and Amanda E. Hooper, minors, under the age of twenty-one years, who sue by Absalom Fowler, their next friend, take nothing by their said action against the said defendant, Elias N. Conway, and that he go hence without day, &c.; and that said defendant do have and recover of and from the said Absalom Fowler, esq., the next friend of the said plaintiffs, all his costs in and about this suit in this behalf expended, and that he have execution therefor.

Proceedings on the 25th day of April, 1857:

NATHAN E. HOOPER et al., Plaintiffs,
vs.
ELIAS N. CONWAY, Defendant.
} In Ejectment.

It appearing to the court that leave was granted to the plaintiffs in this cause to open and publish their depositions on the 14th day of April, 1857, and by misprision the same was omitted to be entered of record on that day; therefore, on motion of said plaintiffs, ordered that leave to publish said depositions be entered now for then.

Proceedings on the 29th April, 1857:

NATHAN E. HOOPER, LOUISA J. HOOPER, and Amanda E. Hooper, minors under the age of twenty-one years, who sue by Absalom Fowler, esq., their next friend, Plaintiffs,
vs.
ELIAS N. CONWAY, Defendant.
} In Ejectment.

This day came the said plaintiffs, by their attorney, and present their bill of exceptions in this case, in accordance with leave granted them at the trial of this case, to prepare and present the same at a future day of this term, which bill of exceptions is accordingly signed and sealed by the court and ordered to become and constitute a part of the record of this cause, together with the papers thereto annexed, and therein referred to.

And thereupon the said plaintiffs file their writ of error to the Supreme Court of the United States in this cause, and lodge a copy thereof with the clerk of this court; and also file their assignment of errors, and pray the court that their said writ of error be allowed, and the same is allowed accordingly, and the clerk ordered to send up a transcript of the record in obedience to said writ.

And the said plaintiffs filed the bond of Absalom Fowler, Joseph Stillwell and William B. Easley, in the sum of one hundred dollars, payable to the above named Elias N. Conway, conditioned to prosecute the said writ of error in this case to the Supreme Court of the United States, which bond was duly approved by the Hon. Daniel

Ringo, district judge of the United States in and for the eastern and western districts of Arkansas.

In the Circuit Court of the United States for the eastern district of Arkansas—April Term, 1857.

Louisa J. Hooper, Nathan E. Hooper, and Amanda E. Hooper, minors, by Absalom Fowler, their next friend, Plaintiffs, versus Elias N. Conway, Defendant.	In Ejectment.

Be it remembered that on the trial of this cause before a jury the plaintiffs read in evidence to the jury the original evidence and grant of a pre-emption to Nathan Cloyes, brought into court by the register of the United States land office at Little Rock, in the words and figures following, to wit:

Pre-emption Claim, 29th May, 1830.

Nathan Cloyes' testimony, taken on the 23d April, 1831, before James Boswell, a justice of the peace for the county of Independence, in the register's office, in presence of the register.

Question by the register. What tract of the public lands did you occupy in the year 1829, that you claim a right of pre-emption upon?

Answer. On the N. W. fr. ¼ sec. 2, in township 1 N., of range twelve west, adjoining the Quapaw line, being the first fraction that lies on the Arkansas river immediately below the town of Little Rock, and contains about twenty-eight or *tronee* acres, as I have been informed by the county surveyor of Pulaski county, and I claim under the law the privilege to enter the adjoining fraction, or fractions, so as not to exceed one hundred and sixty acres, all lying on the river below the before named fraction.

Question as before. Did you inhabit and cultivate said fraction of land in the year 1829; and if so, what improvement had you in that year in cultivation?

Answer. I did live on said tract of land in the year 1829, and had done so since the year 1826; and in the year 1829 aforesaid I had in cultivation a garden, perhaps to the extent of one acre, and raised vegetables of different kinds, and roasting-ears, and I lived in a comfortable dwelling east of the Quapaw line, and on the before named fraction.

Question as before. Did you continue to reside and cultivate your garden aforesaid on the before named fraction until the 29th May, 1830?

Answer. I did, and have continued to do so until this time.

Question as before. Were you at the passage of the act of Congress, under which you claim a right of pre-emption, a farmer; or, in other words, what was your occupation?

Answer. I was a tin-plate worker, and cultivated a small portion of the fraction before named for the comfort of my family, and carried on my business in a shop adjoining my house.

Question as before. Do you know of any interfering claim under the law that you claim a pre-emption right upon the fraction whereon you live?

Answer. I know of none; and further this deponent saith not.

NATHAN CLOYES.

Sworn and subscribed to before me, the date aforesaid.

J. BOSWELL, *J. P.*

The following is corroborative testimony of John Saylor, in relation to the foregoing pre-emption claim, taken and subscribed to as before.

Question by the register. Do you know anything about the settlement and cultivation of the public lands by Nathan Cloyes, in the year 1829? if you do, state what you know about it.

Answer. I know that in the year 1829, Nathan Cloyes lived below Little Rock, near the river, on the Quapaw lands, and is satisfied that it is the fraction which the claimant Cloyes has stated in his deposition above. And I further state that the said claimant was living on said fraction with his family in a house, and cultivated a small piece of ground, about one acre, near to his house, and raised during that year corn and different kinds of vegetables, and the said claimant Cloyes continued to remain on said fraction from that year until the present time, and under the same cultivation each season. And I further state, that said claimant is a tinner, and did in the year 1829, aforesaid, carry on his business at the improvement before named, and continued to do so until this time.

Question as before. Do you know of any other claim of the nature of Nathan Cloyes, on the fraction which he has stated in his deposition?

Answer. I know there is none, but there is one old field on the adjoining fraction on the river, which a pre-emption right may be claimed, but I know that no part of that fraction was either inhabited or under cultivation in the year 1829 or 1830.

And further this deponent saith not.

JNO. SAYLOR.

Sworn to and subscribed before me the date before named.

J. BOSWELL, *J. P.*

Nathan W. Maynor and Elliott Bussey, being sworn, state that the foregoing affidavit of John Saylor in relation to the pre-emption claim of Nathan Cloyes contains the truth, as they are knowing to all the facts.

N. W. MAYNOR,
ELLIOTT BUSSEY.

Sworn to and subscribed before me the date before written.

J. BOSWELL, *J. P.*

Pre-emption Claim, 29th May, 1830.

Nathan Cloyes—No. 24, N. W. frac. ¼ 2, 1 N., 12 W. Granted for the above frac. ¼ and reject the privilege of entering the adjoining fractions, 28th May, 1831. H. Boswell, reg'r. John Redmon, rec. No. 24. Proof filed 23d April, 1831, and granted 28th May, 1831.

The plaintiffs then read in evidence from the original tract-book or book of entries of lands, brought into court by the said register of the United States land office at Little Rock, the following entry or location of lands therein, to wit:

N. W. and N. E. fr. qrs. of sec. 2, and the N. W. and N. E. fr. qrs. sec. 1, in township one north, range 12 W., 108 $\frac{61}{100}$ths acres, at $1 25 per acre—$135 76¼ cents. Purchased by the heirs of N. Cloyes. Date of sale 5th March, 1834; number of receipt, 663.

Plaintiffs then read in evidence the following copy of a letter from Bernard Smith, then register at Little Rock, and of the patent certificate, both duly certified to be correct copies by the Commissioner of the General Land Office, and attached together, the production of the originals thereof being waived, to wit:

LAND OFFICE, LITTLE ROCK, *April 15th*, 1834.

SIR: Among the certificates which I forwarded to the Gen'l Land Office the 1st inst. is one (No. 663) of a location made in the name of the heirs of N. Cloyes, dec'd, to whom a pre-emption claim was granted at Batesville, A. T. When the application was made to enter the N. W. and N. E. fr. qrs. of sec. 2, and the N. W. and N. E. fr. qr. sec. 1, in T. 1 N., R. 12 W., I did not examine the paper which was transmitted from Batesville confirming Cloyes' pre-emption claim. I have since examined it, and find it endorsed as follows: 'Pre-emption claim 29th May, 1830; Nathan Cloyes; No. 24; N. W. fr. ¼ 2, 1 N., 12 W. Granted for the above fr. qr., and reject the privilege of entering the adjoining fractions, 28th May, 1831.

(Signed) H. BOSWELL, *Reg'r.*
JOHN REDMON, *Recor.*'

I have the honor to be, sir, your ob't serv't,

B. SMITH.

ELIJAH HAYWARD, Esq.,
Commissioner Gen'l Land Office, Washington.

No. 663. LAND OFFICE, LITTLE ROCK,
March 5, 1834.

It is hereby certified that, in pursuance of law, Lydia Louisa Cloyes,

Mary Easter Cloyes, Nathan Henry Cloyes, and William Thomas Cloyes, (heirs of Nathan Cloyes, dec'd, to whom a pre-emption claim under the act of 1830 was granted by the land office at Batesville, A. T.,) on this day purchased of the register of this office the northwest and northeast fractional quarters of section two, and the northwest and northeast fractional quarters of section one, in fractional township one north, and range twelve west, containing in all one hundred and eight $\frac{61}{100}$ acres, at the rate of $1 25 per acre, amounting to one hundred and thirty-five dollars 76¼ cents, for which the said Lydia Louisa Cloyes, Mary Easter Cloyes, Nathan Henry Cloyes, and William Thomas Cloyes, *dec'd*, shall be entitled to receive a patent for the lots above described.

B. SMITH, *Reg'r.*

Note.—It appears from a plat, &c., in this office, that the part of the land applied for above (to wit, the N. W. fr. qr. of sec. No. 2) forms a part of the lands located by Gov'r Pope in selecting 1,000 acres adjoining the town of Little Rock, granted by Congress to raise a fund for the building of a court-house and jail for the Terr'y of Arkansas. This has been noted on the books of the office by direction of the Com'r of the Gen'l Land Office, ×. Application was filed on the 23d Jan'y, 1834.

B. SMITH, *Reg'r.*

All duly certified by the Commissioner of the General Land Office.

The plaintiffs also read in evidence the original receipt of the receiver of public moneys at Little Rock, a true copy of which follows, to wit:

No. 663. RECEIVER'S OFFICE, AT LITTLE ROCK, *March 5th*, 1834.

Received by the hands of Ben. Desha from Lydia Louisa Cloyes, Mary Easther Cloyes, Nathan Henry Cloyes, and William Thomas Cloyes, (heirs of Nathan Cloyes, deceased, late of Pulaski county, A. T.,) the sum of one hundred and thirty-five dollars and seventy-six ¼ cents, being in payment for the northwest and northeast fractional quarters of section two, and the northwest and northeast fractional quarters of section one, in fractional township one, north of the base line, and range twelve west of the fifth principal meridian, containing in all one hundred and eight $\frac{61}{100}$ acres, at $1 25 per acre, $135 76¼.

P. T. CRUTCHFIELD, *Receiver.*

Plaintiffs then proved, by B. F. Owen, that he is the brother of the wife of the said pre-emptor, Nathan Cloyes, now deceased, and that he knew them well before and after they were married; that their oldest daughter was named Louisa; Mary was the next; Nathan or Henry Nathan was the third; and Thomas, the youngest, was

No 111. page 11.
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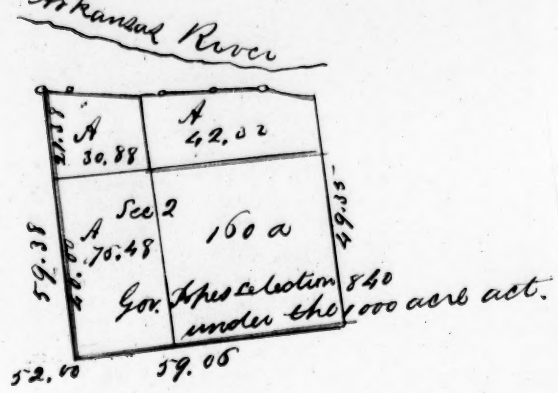

a baby when the witness left Little Rock, 20th of May, 1829, and removed to the State of Louisiana, and Cloyes and family were then living just below the town of Little Rock, on the bank of the Arkansas river, near the steamboat landing; that Cloyes and wife, he thinks, removed to Little Rock in 1825, and thinks their daughter Louisa was then about two years old, Mary probably one year old, and the others were born afterwards; that witness returned to Arkansas from Louisiana in December, 1840, and Thomas, the youngest son, had then died; that Louisa became the wife of Robinson Lytle, and Mary of Elias Hooper, both married previous to 1844, but don't recollect precise dates; and that Elias Hooper and Mary, his wife, removed from Benton, in Arkansas, to the State of Louisiana.

And it was proved by competent legal evidence, that the said Mary Easther Cloyes was married to the said Elias Hooper, on the 12th day of March, A. D. 1840.

It was also proved, that the said defendant Elias N. Conway, at and before the commencement of this suit, was in the actual possession of the lots of land mentioned in the said declaration, except sixty feet of the west end of said lots numbered seven, eight, and nine, in said block or square numbered seven, situated in the northwest corner of the said block numbered seven, and that said block numbered seven was embraced within what was called Governor Pope's addition to Little Rock, and was within and constituted a part of the said northwest fractional quarter of section two, township one north, range twelve west, and the same block of lots described in the declaration, as designated on the plat and plan of said Governor Pope's addition on record in the recorder's office of said county of Pulaski, in which county said lands and town are situated. It was also admitted on the part of the defendant, that Nathan Cloyes, the original pre-emptor, died in June, A. D. 1831.

Plaintiffs also proved, by two depositions, taken at Minden, in the State of Louisiana, that Mary Easter Cloyes, wife of the said Elias Hooper, died in Claiborne parish, Louisiana, about the middle of September, 1850, leaving three children, the issue of her marriage with Hooper, surviving her, to wit, Nathan E. Hooper, now about fourteen years old, Louisa J. Hooper, about eleven years old, and Amanda E. Hooper, about eight years old, and all now and ever since their mother's death residing in said parish of Claiborne, State of Louisiana.

Plaintiff also produced and read in evidence to the jury the following plat and certificate, authenticated by a former surveyor general of Arkansas, to wit, plat of fra'l sec. 2 east of the Quapaw line, and south of the Arkansas river, in township one, north of the base line, R. 12 W. of the 5 principal meridian.

[*For plat see original, page* 21.]

SURVEYOR'S OFFICE, LITTLE ROCK, ARKANSAS,
October 18th, 1850.

The above plat of fractional section two, in township 1 north, range 12 west, east of the Quapaw line, and south of the Arkansas river, is a true and perfect copy of that part of the plat of township 1 north, range 12 west, east of the Quapaw line, on file in this office, which is strictly conformable to the field-notes on file in this office, which have been examined and approved. The south boundary of which was surveyed in the fourth quarter of the year 1818, by Thomas C. Rector, D. S., under what contract is not shown by the papers of this office. The east boundary and subdivisional lines were surveyed by John H. Rawls and John L. Chaslin, in February and March, 1826, for Elias Rector, D. S., under his contract of the 27th of April, 1825, but were suspended until resurveys and corrections were made by Allen Martin, D. S., in April, 1833. The records of this office show that the above mentioned plat was forwarded to the register and Commissioner from this office on the 11th day of April, 1834.

L. GIBSON,
Surveyor Gen'l of Arkansas.

And the said Gibson, who had been formerly United States surveyor general, testified, on cross-examination, that it was required by law, and was the practice and usage of the surveyor general's office, when plats of the surveys were examined and approved, to send one copy of such plat to the register of the land office, another to the Commissioner of the General Land Office, and retain one, and also endorse on the plat when it was approved.

It was also proved, by deeds of conveyance read in evidence, that said Elias Hooper and Mary E., his wife, had on the first day of May, A. D. 1843, said Robinson Lytle and wife on the 29th day of June, 1843, and the said Nathan Henry Cloyes on the tenth day of July, 1850, conveyed to Fowler, in due form of law, one undivided fourth part of said northwest fractional quarter of section two, in township one north, range twelve west, leaving title to the said Mary Easther Hooper, of only one undivided fourth part thereof.

Defendant then proved by Powers, register of the land office at Little Rock, that plats of the public surveys ought to be marked filed, with the proper date when deposited in the register's office from the surveyor general, and that he, as register, came into said register's office on the 8th of April, 1856, and produced an old plat of the said township one north, twelve west, south of the Arkansas river, embracing the land in controversy in this suit, which he testified was the oldest plat found in the office by him, but which was not marked filed by the register, nor was there any mark made on it by the register showing *on* indicating when it was filed or deposited in his office, on which plat the four fractional

quarter sections of land corresponding with said entry, receipt and patent certificate were marked No. 663, and at the foot of which map or plat in the usual form was a certificate of the surveyor general, of which follows a copy, to wit:

SURVEYOR'S OFFICE, LITTLE ROCK, A. T.,
April 9th, 1834.

The above plat of fractional townships 1 and 1, north of the base line, ranges 11 and 12 west of the 5th principal meridian, and south of the Arkansas river, is conformable to the field-notes of the surveys of said townships on file in this office, which have been examined and approved.

J. S. CONWAY,
Sur. Pub. Lands.

The defendant then offered to read in evidence a certain patent embracing the lots in controversy in this suit, to which the plaintiffs objected, on the grounds that it was inoperative and void as to the said northwest fractional quarter, on which said pre-emption had been established, because said fractional quarter had been previously appropriated to the private use of said Nathan Cloyes, deceased, and that such patent had been issued without authority, in violation and without warrant of law, and for land not subject to be granted or patented; but the court overruled the objection, and permitted said patent to be read, and the same was read in evidence to the jury; to which ruling, decision, and judgment of the court in permitting said patent to be read in evidence, the said plaintiffs excepted at the time, and such exception was then noted by the court, and further time given said plaintiffs to prepare and file their bill of exceptions at a future day, which is now done, a true copy of which patent is as follows, to wit:

The United States of America, to all to whom these presents shall come, greeting:

Know ye that, under the provisions of the act of Congress, approved on the fifteenth day of June, one thousand eight hundred and thirty-two, entitled "An act granting the Territory of Arkansas one thousand acres of land for the erection of a court-house and jail at Little Rock," and of the act of Congress approved on the second day of March, one thousand eight hundred and thirty-three, entitled "An act to authorize the governor of the Territory of Arkansas to sell the land granted to said Territory by an act of Congress approved the fifteenth day of June, one thousand eight hundred and thirty-two, and for other purposes," the governor of the Territory of Arkansas has located the following described tracts or parcels of land, and agreeably to the requirements of the last mentioned act, has furnished to the Secretary of the Treasury

a sufficient description thereof, to wit: the northwest fractional quarter of section two, containing thirty acres and eighty-eight hundredths of an acre; the southwest fractional quarter of section two, containing seventy-five acres and forty-eight hundredths of an acre; the southeast quarter of section two, containing one hundred and sixty acres; and the south fractional half of section one, containing three hundred and eighteen acres and seventy-nine hundredths of an acre, all in township one north, of range twelve west; and fractional section six, containing two hundred and fifty-four acres and eighty-five hundredths of an acre, in township one north, of range eleven west, in the district of lands subject to sale at Little Rock, in the Territory of Arkansas.

"There is therefore granted by the United States unto the governor of the Territory of Arkansas, and to his successors in office, the tracts of land above described; to have and to hold the said tracts, with the appurtenances, unto the said governor of the Territory of Arkansas and to his successors in office, in trust for the uses and purposes mentioned in the before recited acts of Congress and no other.

In testimony whereof, I, Andrew Jackson, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the second day of November, in the year of our Lord one [L. S.] thousand eight hundred and thirty-three, and of the independence of the United States the fifty-eighth.

ANDREW JACKSON.
By A. J. DONELSON,
Secretary.

By the President:

ELIJAH HAYWARD,
Commissioner of the General Land Office.

The defendant then proved, by competent deeds of conveyance produced and read in evidence to the jury without objection, except as to the validity of the said patent upon which they purported to be based, that John Pope, the said governor of the Territory of Arkansas, by deed dated March 3d, 1835, reciting that a public sale of lots (made by him in the town of Little Rock) in the addition to said town, on the east side thereof, on the part of one thousand acres selected by him and granted by Congress for the erection of a court-house and jail in said town, which sale was held on the fourth Monday of October, A. D. 1833, and made pursuant to the act of Congress entitled "An act to authorize the governor of the Territory of Arkansas to sell the land granted to said Territory, by an act of Congress approved 15th June, 1832, and for other purposes;" and at which sale James S. Conway

purchased said lots, numbered one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve, in said block numbered seven, the same now in controversy in this suit, and by which last mentioned deed the said John Pope, governor, conveyed all of said last mentioned lots to the said James S. Conway, in fee simple, and in due form of law; and that the said James S. Conway, by a like deed, bearing date on the 30th day of September, 1839, conveyed in due form of law to the said defendant, Elias N. Conway, in consideration of $2,500, a tract of ground fronting on the south side of Markham street, ninety feet, and extending back southward one hundred and fifty feet, including the east end of said lots numbered seven, eight and nine, including ninety feet thereof, superficial measure, from east to west, in said block or square numbered seven, in said Pope's addition to Little Rock, as designated on the plat of said addition, on record in the recorder's office of the said county of Pulaski, in fee simple; and a like deed bearing date on the 17th day of October, 1839, from said James S. Conway to Alexander Boileau, conveying to said Boileau, in fee simple, in due form of law, in consideration of $1,600 in hand paid, the said lot numbered ten, in said block or square numbered seven; and a like deed dated November 24th, 1846, from the said James S. Conway to the said defendant, Elias N. Conway, conveying to the latter in fee simple, and in due form of law, in consideration of the sum of $2,000 in hand paid, the said lots numbered one, two, three, four, five, six, eleven, and twelve, in said block or square numbered seven, in controversy in this suit; and also a like deed from the said Alexander Boileau to the said defendant, Elias N. Conway, bearing date on the 18th day of March, A. D. 1847, whereby the former conveyed to the latter, in fee simple, and in due form of law, for the consideration of $300, the said lot numbered ten, in said block or square numbered seven, now in controversy in this suit; which said several deeds of conveyance, connected together, passed down regularly from the said John Pope, patentee, as aforesaid, all of the title that he derived under said patent, to the said defendant, Elias N. Conway, in and to the lots and parts of lots of land described in the said several conveyances.

It was also proved on the part of he said defendant, by John Wassell, a witness residing on a lot across the street from these, that the said Elias N. Conway, as early as the year 1841 or 1842, enclosed the lots described in the above deeds of conveyance, and so claimed by him under said deeds, with a substantial fence, and has ever since maintained such enclosure, and also used and occupied the lots. And Charles P. Bertrand, another witness, residing across the street from said lots, testified that it was his impression that they were enclosed with a fence, by the said Conway, as early as 1840.

The defendant then offered to read in evidence the record of a suit in chancery, or so much thereof as shows the following state of facts, which both parties admit to be correct, and which facts, decree, &c., are as follows, to wit: That said Lytle and wife, Hooper and wife, and Nathan Henry Cloyes, filed their bill in chancery in the circuit court of Pulaski county, on the 22d of April, 1843, against William Russell, George C. Watkins, the State of Arkansas and others, asserting their right and title to the said northwest fractional quarter of section two, township one north, range twelve west, under the same grant of pre-emption to their ancestor, the said Nathan Cloyes, deceased, read in evidence in this case, and for the possession of the land, and to have their title quieted, &c. Which bill, on demurrer thereto for want of equity, was dismissed, and such dismissal affirmed by the supreme court of this State, on appeal, and which decree of affirmance was taken to the Supreme Court of the United States by writ of error, and the decree of the supreme court of this State was reversed on the case, as then presented to the U. S. Supreme Court, on the ground that the pre-emption right was valid, and superior in equity to that set up under the said patent to Governor Pope, and remanded the cause, with instructions to permit the pleadings on either side to be amended, &c.; and that after the cause came back to the circuit court, and after the death of Mrs. Hooper, to wit, on the 17th of January, 1851, the complainant's bill was amended by filing an amended and supplemental bill, and the plaintiffs in this suit were substituted as complainants, instead of their deceased mother; and Fowler, who had become part owner, was also made a complainant, and several new defendants were also made to the bill, and among them the said Elias N. Conway, not before made a party.

The said amended and supplemental bill of complaint of Robinson Lytle and Lydia L., his wife, Nathan H. Cloyes, Elias Hooper, husband of Mary E. Hooper, deceased, and the minor children and heirs-at-law of the said Mary E., namely, Nathan E. Hooper, Louisa J. Hooper and Amanda E. Hooper, by their next friend, Absalom Fowler, complainants, so filed on the 17th day of January, A. D. 1851, against the State of Arkansas, Elias N. Conway and others, defendants, stated, that on the 22d day of April, 1843, the said Robinson Lytle and Lydia L., his wife, Elias Hooper and Mary E., his wife, Nathan H. Cloyes, a minor, by Wiley Clayton, his guardian, heirs-at-law of Nathan Cloyes, deceased, had filed their original bill on the equity side of the Pulaski circuit court, against the State of Arkansas, James S. Conway, Samuel H. Hempstead, the trustees of the Real Estate Bank of Arkansas, and others, defendants, setting out the matter appearing in it, substantially as the same appears from the statement in the report of the case in 9 Howard's Supreme Court Reports, page 314 to

319, and in the Opinion of Mr. Justice McLean, from page 328 to 331, and which is expressly referred to.

The supplemental and amended bill makes the original bill and exhibits part of such supplement, in the same manner as if incorporated therein; and after reciting the proceedings on the original bill, the decision of the Supreme Court of the State and of the United States thereon, remanding the cause, proceeded to aver the death of the said Mary E. Hooper, leaving Elias Hooper, her husband, and the said Nathan E. Hooper, Louisa J. Hooper and Amanda E. Hooper, infants of tender years, her surviving; that Absalom Fowler, by conveyances duly executed and acknowledged, had, since the original suit, acquired an undivided interest of one-fourth of said northwest fractional quarter of section numbered two, township one north, range twelve west, containing 30 $\frac{88}{100}$ acres, and which conveyances are specially set forth and exhibited; also averring that at the time of the death of Nathan Cloyes, his four children were minors; that said Lydia L. was born on the 17th of June, 1822, and was married to said Robinson Lytle on the 24th of January, 1839; the said Mary E. was born on the 17th of April, 1824, was married to Elias Hooper on the 12th of March, 1840, and died in September, 1850; that Nathan H. Cloyes was born on the 22d of January, 1826; that William Thomas Cloyes was born on the 26th of June, 1828, and died without issue, in 1840; and that Nathan Cloyes, the ancestor, died in the summer of 1831; that the complainants abandoned all claim to the adjoining fractions, and only claimed the said northwest fractional quarter of said section two, making divers persons defendants not before parties, to wit: Elias N. Conway, Louis George, and others, alleging that the defendants were unlawfully in possession of said tract of land; that the patent issued from the United States to the governor of Arkansas Territory and his successors in office, for the use and benefit of said Territory for said fractional quarter, was issued by mistake, or in fraud, without authority of law, and was null and void; that the defendants claimed by conveyances under said patent, praying for an account of rents and profits; that the said patent and all muniments of title of the defendants vested in the complainants, and the possession of the said fractional quarter put in their possession, and for further relief.

On the 24th of January, 1853, the complainants filed a second amendment, averring that, by instructions and letters from the Commissioner of the General Land Office, the heirs of Cloyes were allowed the said fractional quarter of section two and the adjoining fractions, and did enter the same on the 5th day of March, 1834, and that certificates thereof were granted, No. 663, and the entries carried into the tract-book of the district land office; and also that number 663 put on the plat of the township to said

tracts; and that the defendants had knowledge thereof; praying for same relief as in previous bills.

The State of Arkansas, in virtue of a constitutional provision, having succeeded to all the rights of the Territory of Arkansas, answered the supplemental and amended bills, and the amendment thereto, denying that Nathan Cloyes, the ancestor, was a settler of the said N. W. fractional quarter of section two prior to the 29th May, 1830, or that he was then in possession thereof, or that he made improvements at any time, or cultivated the same, or any part thereof, in 1829, so as to be entitled to the benefit of the pre-emption act of the 29th May, 1830, or any subsequent pre-emption act; that the proof made by him to establish a pre-emption was fraudulent and false; that the allowance thereof by the land officers on such fraudulent and false testimony was null and void, and conferred no right on said Nathan Cloyes, or any one claiming under him; that at the time the entry was alleged to be made the official plat of the survey of the township in which said tract was situate was not in and had not been forwarded or filed in the district land office; and other defences were set up against the claim not material to be noticed.

The answer then avers the selection of said tract of land by Governor Pope, as Governor of the Territory of Arkansas, as part of the 1,000 acre grant on the 30th January, 1833; that the same was duly patented by the United States (among other lands) to the governor of the Territory of Arkansas, and to his successors in office, in trust for the uses and purposes mentioned in the acts of Congress in that behalf, on the 2d day of November, 1833, under the seal of the United States, and signed by the President; and which patent was exhibited with the answer, and is the same read in evidence in this suit; that by act of 2d March, 1833, the governor was authorized, and after having caused the same to be laid off into blocks and lots, as an addition to Little Rock, did, on the fourth Monday of October, 1833, sell the said N.W. fractional qr. of sec. 2 to divers persons, at public auction, to raise a fund for the purpose indicated in said grant.

The answer of Elias N. Conway is similar in averments; denies the validity of the pre-emption; sets up the patent; also the said sale in 1833; the purchase at it, of James S. Conway, of the entire block numbered seven, being embraced in said fractional quarter section, and a regular chain of title by deeds of conveyance from the said James S. Conway to the respondent to the whole of said block, except fifty feet on the west end thereof, belonging to Loui George; and that the respondent had been in actual possession thereof since about 1840, and his title-deeds were exhibited with his answer.

Other answers were filed, not necessary to be noticed, and replications were filed to them, and proof taken on both sides. The cause having been transferred to the Pulaski chancery court, came

on for hearing at the August term, 1854, of the court, before Hulbert F. Fairchild, chancellor, on the bills, answers, replications, exhibits, and proofs in the cause, and was elaborately argued by counsel; and whereupon, at the same term, it was finally ordered and decreed by the said chancellor that the bill should be dismissed for want of equity, and that the complainants should pay the costs; from which final decree the complainants appealed to the supreme court of the State of Arkansas, and the proceedings on said decree were thereby suspended and stayed in law and in fact. And the proceedings in the supreme court of Arkansas in said suit, and the decree of that court on such appeal, rendered on the 20th day of February, A. D. 1857, a true copy of which follows, to wit:

STATE of ARKANSAS,
In the Supreme Court.

Proceedings had in the supreme court of the State of Arkansas in the case lately pending therein of

ROBINSON LYTLE et al., Appellants,
vs.
THE STATE OF ARKANSAS et al., Appellees.
} Appeal from Pulaski Chancery Court.

Proceedings on Thursday, February 14, 1856.

At this day come the said appellants, by their solicitors, and, on motion, it is ordered that the transcript of the record in this case be filed and the case docketed, and the same is filed.

Proceedings on Saturday, July 19, A. D. 1856.

At this day come the said appellants, by their solicitors, and the said appellants file their assignment of errors, and the said appellees their joinder in errors, and this cause is submitted upon the briefs filed, and by the court taken under advisement.

Proceedings on Friday, November 14, A. D. 1856.

At this day come said appellants, and, on motion, file their suggestion of the death of John Drennen and Henry F. Pendleton, two of the appellees herein; and thereupon came said appellees, by their solicitors, and admit the said suggestion to be true, and that said appellees have departed this life; whereupon it is ordered that this cause progress against the surviving appellees.

Proceedings on Friday, 20th February, A. D. 1857.

This cause came on to be heard upon the transcript of the record of the chancery court of Pulaski county, and was argued by the solicitors of the parties; on consideration whereof, it is the opinion of the court, from the proof in the cause, that the pre-emption claim set up in the bill was and is fraudulent in fact and in law; that there is no error in the proceedings and decree of said chancery court in this cause.

It is therefore ordered and decreed that the decree of said chan-

cery court in this cause be, and the same is hereby, in all things affirmed, with costs.

It is further ordered and decreed, that said appellants pay to said appellees all costs herein, and that execution of said costs be had as upon judgments at law.

It was agreed, that to prevent encumbering the record with very voluminous proceedings, the above statement of the same should be held as sufficient.

And it was admitted that the said northwest fractional quarter, embracing the lots now in controversy, was involved and embraced in the said chancery suit in the State courts, (the lots claimed by the defendant being part of said N.W. fr'l qr. of sec. 2;) and also that the complainants in that suit, viz: Nathan E. Hooper, Louisa J. Hooper, and Amanda E. Hooper, by Absalom Fowler, their next friend, are the same identical persons who are plaintiffs in this action of ejectment, and that the said Elias N. Conway, defendant in that, is the same person who is defendant in this.

And it was also agreed and admitted, that the complainants in said chancery cause had, within ten days after the rendition of said decree in the supreme court of Arkansas, sued out a writ of error to the Supreme Court of the United States, and given the requisite bond to stay the execution of said decree, and had citation duly served, whereby the execution thereof was suspended and stayed.

And the plaintiffs objected to the introduction of the said record and proceedings, on the grounds that such decree did not conclude the rights of the said plaintiffs in this suit, and because the said writ of error, and giving said bond and service of said citation within the time prescribed by law, had rendered the decree in the case no longer operative; but the court overruled the objections and admitted the said records as evidence, and the same were, as above stated, all read in evidence, to which the plaintiffs excepted at the time, and such exception was then noted; and further time was then given the said plaintiffs to prepare and file their bill of exceptions thereto at any time during the present term of this court, which is now accordingly done; which was all the evidence given to the jury on the said trial.

Whereupon, and before the jury retired from the bar, the plaintiffs moved the court to give certain instructions to the jury, numbered 1 and 2, each of which said instructions the court refused to give, and excluded them from the jury; to which judgment and decision of the court in refusing the said instructions, and each of them so moved, the said plaintiffs excepted at the time, and such exceptions were then noted down by the court, and time and leave given to the said plaintiffs to reduce such exceptions to form, and file their bill of exceptions at any time during the same term, which is now

done, and which said two instructions so refused were in the words and figures following, to wit:

1. By the act of Congress of 29th of May, 1830, Congress having granted pre-emption rights to settlers on the public lands in Arkansas, and Nathan Cloyes having established his right thereunder to a pre-emption to the said northwest fractional quarter of section two, in township one north, of range twelve west, by proof made to the satisfaction of the proper register and receiver of the land office, on the 23d of April, 1831, which they allowed and granted on the 28th of May, 1831, whilst said act of Congress was in full force, and the public surveys not being then made and perfected so as to admit of any entry of the said tract of land, the heirs-at-law of the said Nathan Cloyes within one year after such surveys were made, to wit, on the 5th of March, 1834, paid for said land, and entered the same in the proper land office, as is proved by record evidence, and evidence in writing adduced in this cause. The title thereby became vested in such heirs, and related back to the inception of the right in 1831. It follows as a matter of law, that the paper in evidence before the jury, purporting to be a patent issued to the governor of Arkansas Territory, dated Nov. 2, 1833, under an act of Congress dated and approved June 15, 1832, is inoperative and void as to the vested rights of said heirs of Cloyes to said tract of land, and conveys no valid title as against them.

2. If the jury believe from the evidence that the title to the land in controversy, such an one as the action of ejectment may be maintained under by the statutes of this State, vested in said Nathan Cloyes, the original pre-emptor, and his heirs-at-law, by the act of Congress passed on the 29th of May, 1830, and by the proof of his cultivation in 1829, and occupation in 1830, at the time of the passage of said act of Congress, made on the 23d of April, 1831, and the grant of the land officers of said pre-emption right on the 28th of May, 1831, the public surveys not being then perfected, if such is the proof, and the payment made by said heirs for said land, and their entry thereof in the land office on the 5th of March, 1834, within one year after the surveys were made and perfected, then the patent read in evidence, dated Nov. 2, 1833, under act of Congress of June 15, 1832, is null and void in law as to the rights of said heirs, and the jury may disregard it either as evidence or as a muniment of title for the defence in this cause.

The defendant then moved the court for certain instructions numbered 1, 2, 3, 4, and 5, consecutively, and each and every one of which the court gave to the jury, against the objection of the plaintiffs; and to the judgments and decisions of the court in giving each and every one of the said five instructions so moved by the defendant, the said plaintiffs excepted at the time, and such exceptions were then noted down by the court, and further time was given to the said

plaintiffs to prepare and file their formal bill of exceptions in respect thereof at the same term, which is now done, in accordance with such leave, and which said five consecutive instructions so moved by the defendant and so given to the jury by the court are in the words and figures following, to wit:

1. The patent from the United States conveying the fee to the northwest fractional quarter of section two in township one north, of range twelve west, to the grantee therein named, dated 2d November, 1833, not appearing to be void, is a complete and paramount legal title, and must prevail in this action over the title of the plaintiffs, and any equities that may exist between the parties behind it can only be asserted and made available in a court of chancery, but cannot affect the patent in this action; and if the jury believe that the undivided interest mentioned in the declaration is embraced in the patent as a portion of the said tract of land, the finding of the jury should be for the defendant.

2. That the action of ejectment is founded on the legal title, and the plaintiffs must recover on the strength of their own title; that a patent from the United States is a higher and better legal title, and must prevail in an action of ejectment over an entry with the register and receiver or a pre-emption right under the laws of the United States, notwithstanding the statute may authorize the action of ejectment to be instituted on the latter and maintained as against any person not holding under a superior title.

3. That if it appears that the undivided interest sought to be recovered in this action was embraced as part of the pre-emption claim mentioned in the chancery suit lately determined by the supreme court of Arkansas, on appeal from the court of chancery, put in evidence herein, and it also appears that the parties are the same in both suits, or that the parties in this action hold, claim, or derive title under the parties in said chancery suit, the decree of the chancellor affirmed by the supreme court is conclusive against the validity of the claim set up by the plaintiffs until the said decree shall be reversed; and the jury should find for the defendant.

4. The said courts had jurisdiction in said chancery suit and were courts of competent jurisdiction, and the final decrees of these courts in the case put in evidence are conclusive in all other courts and places between the parties and privies, on the same subject-matter, until reversed, and such decrees cannot be impeached or the matter embraced by them reinvestigated in any collateral proceeding, or in another suit, nor can they be disregarded.

5. If the alleged right or interest of the said Mary E. Hooper, the ancestor of said plaintiffs, accrued to her at least as early as 5th of March, 1834, and if it appears that she was then a minor, and within five years after, arriving at the age of twenty-one years, did not bring any action or institute any proceeding for the recov-

ery thereof, she was under the facts and circumstances appearing in this case barred, and the plaintiffs, her representatives, are in like manner barred from a recovery as against the defendant, claiming and deriving title under said patent; and the jury should find for the defendant, notwithstanding she may have intermarried after the accrual of her right, if any she had, and before her minority expired; and the jury should find for the defendant.

Whereupon the jury retired, and returned into court a verdict for the defendant.

And the said plaintiffs now, on the 29th day of April, A. D. 1857, a day of the same term, in pursuance of such leave and further grant of time, come and tender this their bill of exceptions to the said several rulings, decisions, and judgments of the court, as above set forth, and pray that the same may be signed, sealed, and made part of the record in said case, as such, which is accordingly done now for then.

DANIEL RINGO, [SEAL.]
U. S. Judge Eastern District of Arkansas.

Filed 29th April, 1857.

WM. FIELD, *Clerk.*
By R. SEARCY, *D. C.*

Know all men by these presents, that we, Absalom Fowler, as principal, and Joseph Stillwell and Wm. B. Easley, as surety, are held and firmly bound unto Elias N. Conway, in the full and just sum of one hundred dollars, to be paid to the said Elias N. Conway, his certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 29th day of April, in the year of our Lord one thousand eight hundred and fifty-seven.

Whereas lately, at a circuit court of the United States, in and for the eastern district of Arkansas, in a suit pending in said court, between Nathan E. Hooper, Louisa J. Hooper, and Amanda E. Hooper, minors, under twenty-one years of age, who sued therein by the said Absalom Fowler, their next friend, plaintiffs, and the said Elias N. Conway, defendant, a judgment was rendered against the said plaintiffs; and the said plaintiffs having obtained a writ of error and filed a copy thereof in the clerk's office of said circuit court, to reverse the said judgment in the aforesaid suit, and a citation directed to the said Elias N. Conway, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington city, on the first Monday of December next, A. D. 1857:

Now, the condition of the above obligation is such, that if the

said plaintiffs shall prosecute their said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation is to be void; else to remain in full force and virtue.

A. FOWLER, [SEAL.]
J. STILLWELL, [SEAL.]
WM. B. EASLEY. [SEAL.]

Sealed and delivered in presence of—

Approved by Daniel Ringo, U. S. judge for the eastern district of Arkansas.

Filed 29th April, 1857.

WM. FIELD, *Clerk.*
By R. SEARCY, *D. C.*

In the Circuit Court of the United States for the eastern district of Arkansas—April Term, A. D. 1857.

NATHAN E. HOOPER, LOUISA J. HOOPER, and AMANDA E. HOOPER, minors, by Absalom Fowler, their next friend, Plaintiffs,
versus
ELIAS N. CONWAY, Defendant.
} In Ejectment.

And the said plaintiffs by their said next friend, with the view of suing out a writ of error to the Supreme Court of the United States, come and say that in the record and proceedings aforesaid, and also in the giving the judgment aforesaid, there is manifest error in the following particulars, to wit:

First. That the said circuit court, against the objection of the said plaintiffs, permitted the said patent so issued to John Pope, governor of the Territory of Arkansas, to be read in evidence to the jury.

Secondly. That the said circuit court, against the objection of the said plaintiffs, permitted the said defendant to read in evidence to the jury the said record, proceedings and decrees of the said chancery court of Pulaski county, and of the supreme court of the State of Arkansas.

Thirdly. That the said circuit court refused to give to the jury the said first and second instructions, and each of them, so moved to be given on the part of the said plaintiffs.

Fourthly. That the said circuit court gave to the jury, against the objection of the plaintiffs, each and every one of the said five instructions moved on the part of the said defendant.

Fifthly. That the judgment aforesaid, in form aforesaid given, was given for the said defendant, whereas, by the law of the land, the said judgment ought to have been given for the said plaintiffs, and against the said defendant.

Wherefore, for the errors aforesaid, and other errors in the record and proceedings aforesaid, the said plaintiffs by their said next friend pray that the judgment aforesaid, in form aforesaid given, may be reversed, annulled, and altogether held for nought, and that they may be restored to all things which they have lost, by occasion thereof, &c.

A. FOWLER,
Next friend, &c., &c.

Filed 29th April, 1857.

WM. FIELD, *Clerk.*
By R. SEARCY, *D. C.*

THE UNITED STATES OF AMERICA,
Eastern District of Arkansas.

I, William Field, clerk of the circuit court of the United States of America for the eastern district of Arkansas, do hereby certify, that the foregoing thirty-seven pages, and parts of pages, contain a full, true, and complete transcript of the record, proceedings and papers on file in the case of Nathan E. Hooper, Louisa J. Hooper, and Amanda E. Hooper, minors under twenty-one years of age, who sue by Absalom Fowler, their next friend, against Elias N. Conway, as the same appear of record in my office.

In testimony whereof, I have hereunto set my hand as such clerk, and affixed the seal of said court, this 19th day of August, A. D. 1857.

[SEAL.]

Attest: WM. FIELD, *Clerk.*

Filed 27th February, 1858.